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## How the Biden Administration's Lax Immigration Enforcement Allows Dangerous Criminal Aliens to Run Free in Americans Communities

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**HOW THE BIDEN ADMINISTRATION’S LAX IMMIGRATION  
ENFORCEMENT ALLOWS DANGEROUS CRIMINAL ALIENS TO RUN  
FREE IN AMERICAN COMMUNITIES**

Interim Staff Report of the  
Committee on the Judiciary  
and  
Subcommittee on Immigration Integrity, Security, and Enforcement  
U.S. House of Representatives



April 16, 2024

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## EXECUTIVE SUMMARY

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Beginning on January 20, 2021, the Biden Administration has prioritized the welfare of illegal aliens over the security of the southwest border and the safety of American citizens. Since President Biden took office, U.S. Customs and Border Protection (CBP) has encountered more than 7.6 million illegal aliens along the southwest border.<sup>1</sup> Under the Biden Administration, there have been 38 straight months with more than 100,000 southwest border illegal alien encounters.<sup>2</sup> Meanwhile, since January 20, 2021, more than 1.8 million known illegal alien “gotaways” have evaded Border Patrol and escaped into the United States.<sup>3</sup> In addition, the Biden Administration has released nearly 4.7 million illegal aliens into American communities.<sup>4</sup> In January 2024, Department of Homeland Security (DHS) Secretary Alejandro Mayorkas reportedly told Border Patrol “that the current rate of release for illegal immigrants apprehended at the southern border is ‘above 85 [percent].’”<sup>5</sup>

Under Chairman Jim Jordan and Subcommittee Chairman Tom McClintock, the Committee on the Judiciary and its Subcommittee on Immigration Integrity, Security, and Enforcement continue vigorous oversight of the Biden Administration’s failing border security and immigration enforcement. This oversight has documented how the Biden Administration’s mass catch-and-release operation at the southwest border and the Administration’s failure to remove illegal aliens, including criminal aliens, once they are inside the United States have affected American lives.

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<sup>1</sup> U.S. Customs and Border Prot., *Sw. Land Border Encounters*, U.S. DEP’T OF HOMELAND SEC., <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (last accessed Mar. 22, 2024) [hereinafter CBP Sw. Land Border Encounters]; Bill Melugin (@BillMelugin\_) X, (Apr. 1, 2024, 7:31 PM), [https://twitter.com/BillMelugin\\_/status/1774942592905724121](https://twitter.com/BillMelugin_/status/1774942592905724121); Griff Jenkins (@GriffJenkins), X (Feb. 7, 2024, 8:33 AM).

<sup>2</sup> CBP Sw. Land Border Encounters, *supra* note 1; *see* Bill Melugin (@BillMelugin\_) X, (Apr. 1, 2024, 7:31 PM), [https://twitter.com/BillMelugin\\_/status/1774942592905724121](https://twitter.com/BillMelugin_/status/1774942592905724121).

<sup>3</sup> Casey Harper, *Border crisis creates national security threat for U.S., observers say*, WASH. EXAMINER (Aug. 7, 2023), <https://www.washingtonexaminer.com/policy/immigration/2586754/border-crisis-creates-national-security-threat-for-u-s-observers-say/>; Griff Jenkins (@GriffJenkins), X (Jan. 24, 2024, 9:11 AM).

<sup>4</sup> *See* H. Comm. on the Judiciary, Rep. on The Biden Border Crisis: How the Biden Admin. Opened the Sw. Border and Abandoned Interior Immigr. Enf’t, at App’x 1 (Oct. 9, 2023), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-10-09-New-Data-and-Testimony.pdf> [hereinafter Oct. Interim Staff Rep.]; U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2023*, U.S. DEP’T OF HOMELAND SEC. (last accessed Mar. 22, 2024); U.S. Customs and Border Prot., *Custody and Transfer Statistics FY 2024*, U.S. DEP’T OF HOMELAND SEC. (last accessed Apr. 15, 2024); Camilo Montoya-Galvez, *Biden administration has admitted more than 1 million migrants into U.S. under parole policy Congress is considering restricting*, CBS NEWS (Jan. 22, 2024), <https://www.cbsnews.com/news/immigration-parole-biden-administration-1-million-migrants/>; *Latest UC Data, Total Monthly Discharges to Individual Sponsors Only*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (last accessed Mar. 22, 2024); Off. of Refugee Resettlement, *Unaccompanied Children Released to Sponsors by State*, U.S. DEP’T OF HEALTH AND HUMAN SERVS. (last accessed Mar. 22, 2024); U.S. Customs and Border Prot., *CBP Releases Mar. 2024 Monthly Update*, U.S. DEP’T OF HOMELAND SEC. (Apr. 12, 2024).

<sup>5</sup> Adam Shaw et al., *Mayorkas tells Border Patrol agents that ‘above 85%’ of illegal immigrants released into US: sources*, FOX NEWS (Jan. 8, 2024, 4:53 PM), <https://www.foxnews.com/politics/mayorkas-tells-border-patrol-agents-illegal-immigrants-released-into-us-sources>.

One of the latest examples of the tragic human consequences of the Biden border crisis is the murder of 22-year-old Georgia nursing student Laken Riley on February 22, 2024.<sup>6</sup> Riley “was found dead on the University of Georgia campus,” which she previously attended, from “blunt force trauma.”<sup>7</sup> On February 23, 2024, police arrested 26-year-old illegal alien Jose Antonio Ibarra in connection with Riley’s kidnapping and murder.<sup>8</sup> Ibarra was charged with “malice murder, felony murder, aggravated battery, aggravated assault, false imprisonment, kidnapping, hindering a 911 call and concealing the death of another.”<sup>9</sup>

According to Immigration and Customs Enforcement (ICE), the Biden Administration released Ibarra into the United States in 2022 after he “entered the U.S. illegally from Venezuela.”<sup>10</sup> The Biden Administration released Ibarra into the country because it determined that Ibarra’s release was warranted due to “urgent humanitarian reasons or significant public benefit,”<sup>11</sup> despite Ibarra’s reported affiliation with the dangerous Venezuelan prison gang Tren de Aragua.<sup>12</sup>

Ibarra’s February 23, 2024, criminal arrest was not his first arrest in the United States. On August 31, 2023, New York City Police Department officers arrested Ibarra and charged him “with acting in a manner to injure a child less than 17 and a motor vehicle license violation.”<sup>13</sup> Two months later, in October 2023, Ibarra and his brother Diego Ibarra “were issued citations after being accused of shoplifting” in Georgia.<sup>14</sup> When Jose Ibarra “failed to appear in court” on

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<sup>6</sup> See Patrick Reilly, *Nursing student Laken Riley did not know suspected killer Jose Ibarra, who is not a US citizen: police*, N.Y. POST (Feb. 23, 2024, 8:43 PM), <https://nypost.com/2024/02/23/us-news/laken-riley-did-not-know-suspected-killer-jose-ibarra-cops/>.

<sup>7</sup> WSBT.com News Staff, *Laken Riley: Here’s what we know about nursing student killed on UGA campus*, WSB-TV 2 ATLANTA (Feb. 24, 2024, 6:43 AM), <https://www.wsbtv.com/news/local/clarke-county/laken-riley-heres-what-we-know-about-nursing-student-killed-uga-campus/TLE4MMTP5RHC7N6VCNUOS55RDQ/>.

<sup>8</sup> *Id.*

<sup>9</sup> Michael Ruiz et al., *Laken Riley case: Georgia authorities identify murder suspect in custody in nursing student’s slaying*, FOX NEWS (Feb. 23, 2024, 5:13 PM), <https://www.foxnews.com/us/laken-riley-case-georgia-authorities-announce-suspect-custody-nursing-students-slaying>.

<sup>10</sup> S. Dev, *Suspect in murder of Georgia nursing student entered U.S. illegally, had previously been arrested, ICE says*, CBS NEWS (Feb. 26, 2024, 7:50 PM), <https://www.cbsnews.com/news/jose-ibarra-suspect-murder-georgia-nursing-student-illegal-entry-venezuela/>.

<sup>11</sup> Emails from U.S. Customs and Border Prot., Off. of Congressional Affairs, to Comm. staff (Mar. 8, 2024) (on file with Comm.); see 8 U.S.C. § 1182(d)(5)(A) (“The Attorney General may, except as provided in subparagraph (B) or in section 1184(f) of this title, in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.”); Devan Markham, *University of Georgia killing: Laken Riley’s death, suspect’s arrest*, NEWS NATION (Mar. 1, 2024, 5:29 AM), <https://www.newsnationnow.com/crime/university-of-georgia-killing-timeline/> (highlighting that the Biden Administration “paroled and released [Ibarra] for further processing due to lack of detention space”).

<sup>12</sup> Jennie Taer, *Migrant charged with Laken Riley’s murder easily entered US despite links to bloodthirsty gang, bombshell Post probe reveals*, N.Y. POST (Mar. 8, 2024), <https://nypost.com/2024/03/08/us-news/migrant-charged-with-murdering-laken-rileys-easy-path-to-us/>.

<sup>13</sup> Dev, *supra* note 10.

<sup>14</sup> Rosie Manins, *Laken Riley case: Suspect had been arrested by federal, local authorities*, ATLANTA JOURNAL-CONSTITUTION (Feb. 26, 2024), <https://www.ajc.com/news/suspect-in-student-death-at-uga-cited-for-october-shoplifting-in-athens/KQNKOZMOLJBINHW4HQQXXZJ27Q/>.

December 20, “[a] bench warrant was issued” for his arrest.<sup>15</sup> Despite Ibarra’s criminal record, ICE did not arrest him.<sup>16</sup>

The Biden Administration’s open-borders policies serve as a magnet to foreign nationals all over the globe, as they know that if they simply arrive at the U.S. border, the Administration will release them into the country. The circumstances in which Laken Riley’s alleged murderer was allowed to remain free despite his previous criminal activity are a tragic reminder of the consequences of President Biden’s and Secretary Mayorkas’s open-borders policies. In the course of the Committee’s and Subcommittee’s oversight, we have obtained firsthand evidence from ICE officials that theft offenders—such as Riley’s alleged murderer—are lower priorities under the Biden Administration than under the Trump Administration. These officials have warned about the consequences of the Biden Administration’s border crisis. To date, the Committee’s and Subcommittee’s oversight has revealed:

- Of the millions of illegal aliens released into the United States since January 2021, the Biden Administration failed to remove, through immigration court removal proceedings, roughly 99.7 percent of those illegal aliens.<sup>17</sup>
- Unlike before President Biden took office, the Mayorkas Memo imposes additional challenges today for ICE officers to arrest a “lower-level” criminal alien.<sup>18</sup> In a transcribed interview with the Committee last fall, an ICE official admitted that aliens arrested for larceny and theft offenses would not be “presumptive priorities” under the Mayorkas Memo.<sup>19</sup> Stated differently, the Biden Administration has made it more difficult for ICE officers to arrest, detain, and remove aliens who, like Ibarra, have been charged with theft offenses.<sup>20</sup>
- ICE officers may refuse to arrest and detain an alien from a country, like Venezuela, that refuses to accept the return of its nationals, which all but ensures that Venezuelans, even those with criminal histories like Ibarra, can remain in the United States.<sup>21</sup> In a transcribed interview with the Committee in June 2023, an ICE official stated, “So if there’s a foreign national from a country that we’re not going to be able to remove – Venezuela is the best example – we might want to have that information available for our resources in the field, but it might make more sense to utilize our resources elsewhere.”<sup>22</sup>

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<sup>15</sup> *Id.*

<sup>16</sup> *See generally id.*

<sup>17</sup> *See* H. Comm. on the Judiciary, Interim Staff Rep., *New Data Reveal Worsening Magnitude of the Biden Border Crisis and Lack of Interior Immigr. Enf’t*, at 4 (Jan. 18, 2024), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2024-01-18-new-data-reveal-worsening-magnitude-of-the-biden-border-crisis-and-lack-of-interior-immigration-enforcement.pdf> [hereinafter Jan. Interim Staff Rep.].

<sup>18</sup> *See* Transcribed Interview of ██████████ Deputy Field Office Director at 48-49 (Sept. 28, 2023) (on file with Comm.).

<sup>19</sup> *See id.* at 48-49, 52.

<sup>20</sup> *See id.*

<sup>21</sup> *See* Transcribed Interview of ██████████, ICE, Enf’t and Removal Operations, Enf’t Div., at 55-56 (June 27, 2023) (on file with Comm.) (“But basically, if I know I’m not going to be able to remove somebody, we would not make an arrest administratively.”).

<sup>22</sup> *See id.* at 38.

In stark contrast to President Trump and his Administration's prioritization of border security and immigration enforcement despite intense pressure from open-borders activists, President Biden and his Administration cower to the far-left fringe. Perhaps there is no clearer example than what happened when, during the March 7, 2024, State of the Union speech, President Biden described Laken Riley's illegal alien alleged murderer as "an illegal."<sup>23</sup> Almost immediately, Democrat Members of Congress and other open-borders zealots denounced the President's use of the term "illegal."<sup>24</sup> The next day, President Biden told a reporter that Ibarra was "technically not supposed to be here."<sup>25</sup> Then, just two days after the State of the Union, during an MSNBC interview, President Biden expressed his "regret" for using the word "illegal" to describe Ibarra.<sup>26</sup> President Biden went on to claim that illegal aliens like Ibarra "built the country."<sup>27</sup> President Biden's submission to progressive ideology is another slap in the face to Laken Riley's family and the families of all of the other victims of illegal aliens the Biden Administration has released into American communities.

On May 11, 2023, the House of Representatives passed H.R. 2, the Secure the Border Act of 2023, which is the strongest immigration enforcement and border security legislation in decades.<sup>28</sup> Americans have waited long enough for Senate Democrats to pass and President Biden to sign into law this essential piece of legislation. In the meantime, the Committee and Subcommittee will continue to conduct oversight of President Biden's and Secretary Mayorkas's disastrous immigration policies.

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<sup>23</sup> *Full Transcript of Biden's State of the Union*, N.Y. TIMES (Mar. 8, 2024, 10:19 AM), <https://www.nytimes.com/2024/03/08/us/politics/state-of-the-union-transcript-biden.html>.

<sup>24</sup> Vanessa Arrendondo, *Migrant advocates, Democrats slam Biden's use of 'illegal' during State of the Union speech*, OREGONLIVE (Mar. 8, 2024, 3:06 PM), <https://www.oregonlive.com/reckon/2024/03/migrant-advocates-democrats-slam-bidens-use-of-illegal-during-state-of-the-union-speech.html>; Bryan Metzger, *Progressives are fuming at Biden for describing a migrant as an 'illegal' during his State of the Union address*, BUS. INSIDER (Mar. 8, 2024, 11:26 AM), <https://www.businessinsider.com/progressive-democrats-biden-laken-riley-immigration-illegal-state-union-2024-3>.

<sup>25</sup> Alexandra Marquez, *Biden says he regrets referring to 'an illegal' and defends direct criticism of Supreme Court in State of the Union*, NBC NEWS (Mar. 9, 2024, 4:38 PM), <https://www.nbcnews.com/politics/white-house/biden-says-regrets-reference-illegal-state-union-address-rcna142561>.

<sup>26</sup> *Id.*

<sup>27</sup> Rich Calder, Patrick Reilly, & Nikki Mascali Roarty, *Biden sparks outrage as he apologizes for using 'illegal' to describe Laken Riley's accused migrant killer*, N.Y. POST (Mar. 9, 2024, 8:01 PM), <https://nypost.com/2024/03/09/us-news/biden-regrets-using-illegal-to-describe-laken-rileys-accused-killer/>.

<sup>28</sup> Secure the Border Act of 2023, H.R. 2, 118th Cong. (2023).

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## HOW THE BIDEN ADMINISTRATION ALLOWS DANGEROUS CRIMINAL ALIENS INTO THE U.S.

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There is no serious dispute that the southwest border of the U.S. is open and unsecured. The data alone show the massive influx of illegal aliens into the country on a daily basis, incentivized by the Biden Administration's open-borders policies. Contrary to the detached narrative from the Administration and its allies in Congress, the illegal aliens crossing the border are not all mothers and children in search of a better life. As the Committee's and Subcommittee's oversight has shown, these illegal aliens include a number of dangerous and violent criminals with records of arrests in their home country, as well as known or suspected terrorists. Given the Administration's open borders and lax vetting, there is simply no way for the American people to know precisely how many dangerous criminal aliens are flowing into the U.S.

On February 22, 2024, as 22-year-old nursing student Laken Riley went for a run on the University of Georgia campus, a 26-year-old illegal alien from Venezuela allegedly murdered her.<sup>29</sup> The alleged murderer, Jose Antonio Ibarra, has been charged with "malice murder, felony murder, aggravated battery, aggravated assault, false imprisonment, kidnapping, hindering a 911 call, and concealing the death of Riley."<sup>30</sup>

The Biden Administration released Ibarra at the southwest border in September 2022 when he "crossed into El Paso, Texas,"<sup>31</sup> despite his reported affiliation with the dangerous Venezuelan prison gang Tren de Aragua.<sup>32</sup> He was in CBP custody for a mere 21 hours before being released into the United States.<sup>33</sup>

Less than a year after his arrival in the United States, Ibarra began his criminal career in this country. On August 31, 2023, New York City Police Department officers arrested Ibarra and charged him "with acting in a manner to injure a child less than 17 and a motor vehicle license violation."<sup>34</sup> In October 2023, Ibarra and his brother Diego Ibarra "were issued citations after being accused of shoplifting" in Georgia.<sup>35</sup> When Ibarra "failed to appear in court" on December 20, "[a] bench warrant was issued" for his arrest.<sup>36</sup> Despite his criminal record, Ibarra was not arrested by ICE.<sup>37</sup>

### ***The Biden Administration's Mass Catch-and-Release of Illegal Aliens***

The Biden Administration released Ibarra into the United States because it determined that Ibarra's release was warranted due to "urgent humanitarian reasons or significant public

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<sup>29</sup> Manins, *supra* note 14.

<sup>30</sup> *Id.*

<sup>31</sup> Reilly, *supra* note 6.

<sup>32</sup> Taer, *supra* note 12.

<sup>33</sup> Ali Bradley et al., *ICE says detainees against Jose Ibarra's brother were 'not honored'*, NEWS NATION (Feb. 29, 2024, 7:02 PM), <https://www.newsnationnow.com/crime/diego-ibarra-2023-arrests-ice/>.

<sup>34</sup> Dev, *supra* note 10.

<sup>35</sup> Manins, *supra* note 14.

<sup>36</sup> *Id.*

<sup>37</sup> *See id.*

benefit.”<sup>38</sup> As a result, Ibarra was free to commit crimes in the United States, including allegedly kidnapping and murdering Laken Riley. Ibarra is just one of millions of illegal aliens who the Biden Administration has released at the southwest border since January 2021. The Biden Administration’s abuse of the immigration laws’ requirements to detain illegal aliens who arrive at the southwest border has enabled and encouraged these releases.



The Immigration and Nationality Act (INA) mandates detention for aliens arriving at the border who express an intention to apply for asylum or a credible fear of persecution.<sup>39</sup> The Supreme Court emphasized in 2018 that the mandatory detention requirements under INA section 235 “mandate detention of aliens throughout the completion of applicable proceedings and not just until the moment those proceedings begin.”<sup>40</sup> A federal judge in Florida recently agreed, holding, “‘shall be detained’ means what it says and that is a mandatory requirement.”<sup>41</sup> The judge described how the Biden Administration’s failure to detain aliens has:

[E]ffectively turned the Southwest Border into a meaningless line in the sand and little more than a speedbump for aliens flooding into the country by prioritizing “alternatives to detention” over actual detention and by releasing more than a million aliens into the country—on “parole” or pursuant to the exercise of “prosecutorial

<sup>38</sup> Emails from U.S. Customs and Border Prot., Off. of Cong. Affairs, to Comm. staff (Mar. 8, 2024) (on file with Comm.); see Markham, *supra* note 11.

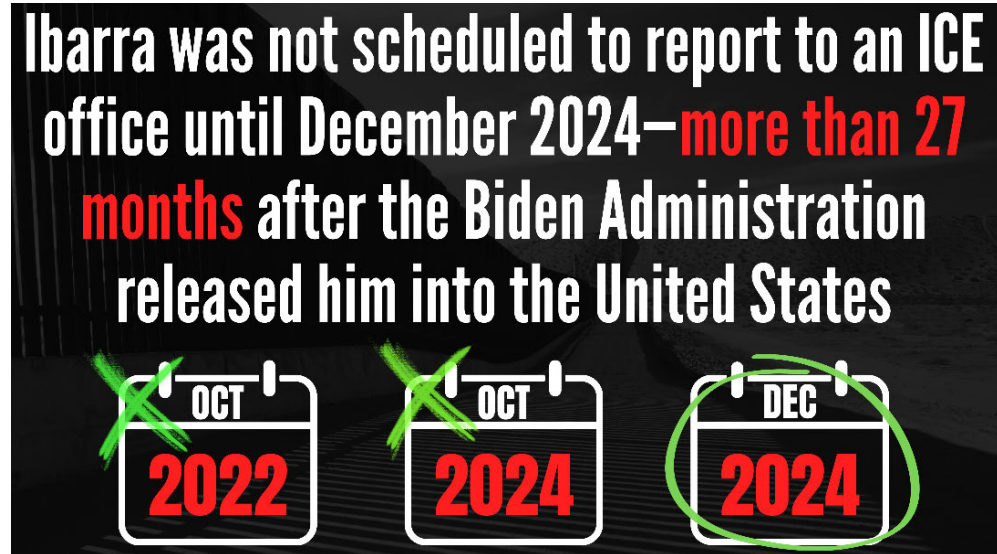
<sup>39</sup> See 8 U.S.C. § 1225(b)(1)(B)(ii) (“If the officer determines at the time of the interview that an alien has a credible fear of persecution (within the meaning of clause (v)), the alien shall be detained for further consideration of the application for asylum.”); 8 U.S.C. § 1225(b)(1)(B)(iii)(IV) (“Any alien subject to the procedures under this clause shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.”); 8 U.S.C. § 1225(b)(2)(A) (“...the alien shall be detained for a proceeding under section 1229a of this title”).

<sup>40</sup> See *Jennings v. Rodriguez*, 583 U.S. 281, 302 (2018).

<sup>41</sup> *Florida v. United States*, 660 F. Supp. 3d 1239, 1273 (N.D. Fla. 2023).

discretion” under a wholly inapplicable statute—without even initiating removal proceedings.<sup>42</sup>

Despite such clear detention requirements, Secretary Mayorkas has routinely released illegal aliens into the United States.<sup>43</sup> Beginning in March 2021, Border Patrol authorized the release of aliens arriving at the southwest border without first serving them with a Notice to Appear (NTA) and placing them in removal proceedings, as the statute requires.<sup>44</sup> Instead, the



Biden Administration issued aliens a Notice to Report, with instructions to report to a local ICE office to be served with an NTA.<sup>45</sup> Those offices, however, are backlogged for years for those preliminary appointments, with New York City’s ICE office

at 99 percent capacity through February 2034.<sup>46</sup> Offices in Miramar, Florida, are mostly booked through March 2029; in Chicago, through March 2028; and in Dallas, through March 2027.<sup>47</sup> Similarly, CBP also adopted a “Parole+ATD” policy, in which aliens were released into the United States through parole and “alternatives to detention,” which could have included ankle monitoring or an alien “periodically ‘checking in’ with ICE remotely through a smartphone app or over the telephone.”<sup>48</sup> Since January 2021, the Administration has released millions of illegal aliens into the United States, with at least 3,095,577 having “no confirmed departure from the United States as of September 30, 2023.”<sup>49</sup> Ibarra was not scheduled to report to an ICE office until the end of 2024—more than 27 months after the Biden Administration released him into the United States.<sup>50</sup>

<sup>42</sup> *Id.* at 1249.

<sup>43</sup> *See* 8 U.S.C. § 1225(b)(1)(B)(ii); *see also* 8 C.F.R. § 1239.1(a) (“Every removal proceeding conducted under [8 U.S.C. § 1229a] to determine the deportability or inadmissibility of an alien is commenced by the filing of a notice to appear with the immigration court.”).

<sup>44</sup> *Florida*, 660 F. Supp. at 1250, 1255-56.

<sup>45</sup> *Id.*

<sup>46</sup> Top 10 Parole/NTR Appointment Backlog Locations Chart as of Mar. 31, 2024, provided to H. Comm. on the Judiciary staff by U.S. Immigr. and Customs Enf’t (Apr. 10, 2024) (on file with Comm.).

<sup>47</sup> *Id.*

<sup>48</sup> *Florida*, 660 F. Supp. 3d at 1259.

<sup>49</sup> *See* Jan. Interim Staff Rep., *supra* note 17.

<sup>50</sup> *See* Taer, *supra* note 12.

In addition to record numbers of illegal alien encounters at the border, the Biden Administration has created illegal programs to categorically parole hundreds of thousands of additional aliens into the United States. For example, in response to “almost four times as many Venezuelans” attempting to cross the southwest border than the year before, in October 2022, DHS announced the creation of such a program for Venezuelan nationals, which would allow up to 24,000 Venezuelans into the United States each year.<sup>51</sup> On January 5, 2023, DHS—purportedly in preparation for the end of the emergency health exclusion authority under Title 42—expanded the illegal categorical parole program to Cubans, Haitians, and Nicaraguans, and increased the allowable number to at least 360,000 qualifying nationals each year.<sup>52</sup> On April 26, 2023, DHS announced additional categorical parole programs for nationals of El Salvador, Guatemala, Honduras, and Colombia.<sup>53</sup>

Last year, Secretary Mayorkas boasted that bringing illegal aliens into the United States via such routes was “working” to help secure the border.<sup>54</sup> On March 12, 2023, however, more than 1,000 illegal aliens from Venezuela, one of the categorical parole program countries, rushed and nearly breached the El Paso Port of Entry.<sup>55</sup> In addition, in late April 2023, nearly 21,000 Venezuelan nationals crossed illegally into the Rio Grande Valley Border Patrol Sector in just 12 days.<sup>56</sup> Another 1,000-person caravan, largely made up of Venezuelan nationals, crossed from Guatemala into Mexico during the weekend of July 15-16, 2023, en route to the southwest U.S. border.<sup>57</sup> In October 2023, “Venezuelans passed Mexicans as the largest single nationality attempting to cross the southern border without visas,” providing even further proof that the Administration’s illegal categorical parole programs have only supercharged, rather than discouraged, illegal immigration.<sup>58</sup>

These programs turn the parole statute, INA section 212(d)(5), on its head. That statute authorizes the DHS Secretary to “temporarily” and “only on a case-by-case basis for urgent humanitarian reasons or significant public benefit” parole certain aliens into the United States.<sup>59</sup>

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<sup>51</sup> *DHS Announces New Migration Enf’t Process for Venezuelans*, U.S. DEP’T OF HOMELAND SEC. (Oct. 12, 2022), <https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans>.

<sup>52</sup> *DHS Continues to Prepare for End of Title 42; Announces New Border Enf’t Measures and Additional Safe and Orderly Processes*, U.S. DEP’T OF HOMELAND SEC. (Jan. 5, 2023), <https://www.dhs.gov/news/2023/01/05/dhs-continues-prepare-end-title-42-announces-new-border-enforcement-measures-and>.

<sup>53</sup> *Fact Sheet: U.S. Gov’t Announces Sweeping New Actions to Manage Regional Migration*, U.S. DEP’T OF HOMELAND SEC. (Apr. 27, 2023), <https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration>.

<sup>54</sup> *Unlawful Sw. Border Crossings Plummet Under New Border Enf’t Measures*, U.S. DEP’T OF HOMELAND SEC. (Jan. 25, 2023), <https://www.dhs.gov/news/2023/01/25/unlawful-southwest-border-crossings-plummet-under-new-border-enforcement-measures>.

<sup>55</sup> Greg Wehner, *Border Crisis: Over 1,000 migrants rush bridge linking Mexico to US in El Paso, Texas*, FOX NEWS (Mar. 12, 2023), <https://www.foxnews.com/politics/border-crisis-migrants-rush-bridge-linking-mexico-u-s-el-paso-texas-video>.

<sup>56</sup> Bob Price & Randy Clark, *Exclusive: 21K Venezuelan migrants in 12 days crossed border into one Texas sector*, BREITBART (Apr. 30, 2023), <https://www.breitbart.com/border/2023/04/30/exclusive-21k-venezuelan-migrants-in-12-days-crossed-border-into-one-texas-sector/>.

<sup>57</sup> *Migrant Caravan Heads Toward U.S. Border* (Fox News television broadcast July 17, 2023), <https://www.foxnews.com/video/6331338079112>.

<sup>58</sup> Stef W. Kight, *Venezuelans surpass Mexicans crossing U.S. border*, AXIOS (Oct. 25, 2023), <https://www.axios.com/2023/10/25/venezuelans-surpass-mexicans-migrants-southern-border-biden>.

<sup>59</sup> 8 U.S.C. § 1182(d)(5)(A).

Despite what the Biden Administration claims, its parole programs are illegal based on both the plain text of the statute and the history of immigration parole in the United States. In 1952, Congress created the parole authority to allow aliens without legal means to enter the United States a limited avenue to do so for a temporary period.<sup>60</sup> Over time, administrations began to abuse parole authority, admitting large classes of aliens not otherwise admissible to the United States for an indefinite period.<sup>61</sup> In 1996, in response to increasing abuses by the Executive Branch, Congress placed explicit restrictions on the parole authority.<sup>62</sup> Those restrictions are now codified in section 212(d) of the INA and require parole to be exercised sparingly.<sup>63</sup> In 2011, the U.S. Court of Appeals for the Second Circuit in *Cruz-Miguel v. Holder* noted that the clear intent underlying the 1996 change to the parole statute “was animated by concern that parole under [section 212(d)(5)(A)] was being used by the executive to circumvent congressionally established immigration policy.”<sup>64</sup> Jose Ibarra is just one of countless beneficiaries of the Biden Administration’s abuse of this limited authority.

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### HOW THE BIDEN ADMINISTRATION ALLOWS CRIMINAL ALIENS TO REMAIN IN THE U.S.

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President Biden’s policies have ensured that most aliens can remain in the country indefinitely—even after those illegal aliens, like Ibarra, have committed a crime.<sup>65</sup> In fact, instead of ensuring that criminal aliens can be quickly removed from the United States, President Biden and Secretary Mayorkas have made it more difficult for ICE officers to arrest criminals.<sup>66</sup>

During the first eight months of the Biden Administration, then-acting DHS Secretary David Pekoske, Acting ICE Director Tae Johnson, and DHS Secretary Mayorkas issued three memoranda that articulated different immigration enforcement priorities for the new Administration.<sup>67</sup> In September 2021, Secretary Mayorkas issued the third and final memo, entitled “Guidelines for the Enforcement of Civil Immigration Law” (“Mayorkas Memo”), outlining three enforcement priorities: national security, public safety, and border security.<sup>68</sup> As the Committee and Subcommittee previously detailed in an October 2023 staff report:

The Mayorkas Memo begins with the assumption that “undocumented noncitizens” work hard and contribute to “our communities” and that “bipartisan groups” have “tried to pass legislation that would provide a path to citizenship or other lawful status for the approximately 11 million undocumented noncitizens” in the country.

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<sup>60</sup> Pub. L. No. 82-414, 66 Stat. 163 (June 27, 1952).

<sup>61</sup> Adam Cox & Cristina Rodriguez, “The President and Immigration Law Redux,” 125 Yale L.J. 104, 116-17 (2015).

<sup>62</sup> 8 U.S.C. § 1182(d)(5)(A).

<sup>63</sup> *Id.*

<sup>64</sup> *Cruz-Miguel v. Holder*, 650 F.3d 189, 199 n.15 (2d Cir. 2011); see H.R. Rep. No. 104-169, pt. 1, at 140-41 (1996).

<sup>65</sup> See Oct. Interim Staff Rep., *supra* note 4, at 11-17.

<sup>66</sup> See *id.* at 14-16.

<sup>67</sup> See *Texas v. United States*, 40 F.4th 205, 213-214 (5th Cir. 2022).

<sup>68</sup> See *id.*; see Memorandum from Alejandro N. Mayorkas, Sec’y, Dep’t of Homeland Sec., to Tae Johnson, Acting Dir., U.S. Immigr. and Customs Enf’t, et al., “Guidelines for the Enf’t of Civil Immigration Law” (Sept. 30, 2021).

From that premise, Secretary Mayorkas articulated a new policy that the mere fact that aliens are removable pursuant to U.S. law “should not alone be the basis of an enforcement action against them.” Under the Mayorkas Memo, for instance, “[b]efore ICE officers [could] arrest and detain aliens as a threat to public safety, they [were] now required to conduct an assessment of the individual and the totality of facts and circumstances, including various aggravating or mitigating factors.” In this assessment, ICE officers were prohibited from relying solely on the fact of an alien’s conviction, regardless of the seriousness of the underlying crime. After listing certain aggravating and mitigating factors, the Mayorkas Memo states that the listed factors were “not exhaustive” and that “the overriding question is whether the noncitizen poses a *current* threat to public safety.” The Mayorkas Memo also does not presumptively subject aliens with aggravated felony convictions to enforcement action or detention.<sup>69</sup>

Consequently, the Mayorkas Memo requires “a lengthier review process before an ICE officer can arrest or remove an illegal alien,” contributes to “fewer ICE arrests of criminal aliens,” and is responsible for “lower removal numbers.”<sup>70</sup>

Mayorkas Memo training materials obtained by the Committee and Subcommittee reveal the absurdity of the Administration’s “enforcement priorities.”<sup>71</sup> The foundational training course describes the Mayorkas Memo’s purpose as serving ICE’s “mission and our country’s well-being” through the “thoughtful consideration of the totality of the facts and circumstances in each and every case.”<sup>72</sup> The training also states, “In exercising our discretion effectively and justly, ICE is also guided by the fact that the majority of noncitizens who could be subject to removal have been contributing members of our communities for years.”<sup>73</sup> In highlighting “undocumented noncitizens’ contributions to America,” the Mayorkas Memo training materials abandon the law in favor of trivia about illegal aliens, such as 16.7 million “U.S. citizens living in a mixed family household with [illegal aliens],” \$80 billion “[p]aid in annual federal taxes by [illegal aliens] and their households,” and 5.2 million “[illegal aliens] serving in essential jobs such as healthcare, food supply chain, etc.”<sup>74</sup>

Once the training finally addresses which aliens may be arrested and removed, the materials include a laundry list of “mitigating factors” for an ICE officer to consider before arresting or removing an alien, including: an illegal alien’s age and length of presence in the United States, “[a] mental condition that may have contributed to the criminal conduct, or a physical or mental condition requiring care or treatment,” “[i]mpact of removal on family in the

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<sup>69</sup> Oct. Interim Staff Rep., *supra* note 4, at 14-15.

<sup>70</sup> *Id.* at 15.

<sup>71</sup> See generally ICE Academy: Guidelines for the Enforcement of Civil Immigration Law, Foundational Training, provided to H. Comm. on the Judiciary Staff by Dep’t of Homeland Sec. (Apr. 3, 2024) (on file with Comm.) [hereinafter Mayorkas Memo Training].


<sup>72</sup> *Id.* at 11.

<sup>73</sup> *Id.* at 13.

<sup>74</sup> *Id.*

United States, such as loss of provider or caregiver,” “[w]hether the [alien] may be eligible for humanitarian protection or other immigration relief,” and “[t]ime since an offense and evidence of rehabilitation.”<sup>75</sup> If that process is not sufficient “[t]o develop a full profile” of the criminal alien, the Mayorkas Memo training instructs that “the officer may need to go beyond the contents of the record and pursue interviews of individuals with relevant information,” particularly “if the [alien] is not represented by counsel.”<sup>76</sup>

To further inoculate ICE officers against pursuing arrests and removals of criminal aliens, the Mayorkas Memo training materials offer case hypotheticals to determine whether a criminal alien should be arrested.<sup>77</sup> In one example, the training materials ask whether a drug trafficker who served a 20-year prison sentence after a RICO investigation “should. . . be a priority for apprehension and removal.”<sup>78</sup> The materials never answer that seemingly clear-cut question; instead, the training highlights that the alien is 72 years old and has “diabetes, hypertension, and chronic obstructive pulmonary disease (COPD).”<sup>79</sup> In such a circumstance, ICE officers are directed to examine not the law but the alien’s “family or community support” and “any record of rehabilitation while incarcerated.”<sup>80</sup>



Noncitizen, 72, was convicted 20 years ago for the offenses of possession with intent to distribute (PWID) methamphetamines and money laundering. These convictions were the result of a RICO investigation. The noncitizen will have completed their sentence next week and is scheduled to be released from BOP custody. The noncitizen entered the U.S. as an LPR at the age of 43. The noncitizen has diabetes, hypertension, and chronic obstructive pulmonary disease (COPD).

**Should the noncitizen be a priority for apprehension and removal?**

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<sup>75</sup> Mayorkas Memo Training, *supra* note 71, at 28.

<sup>76</sup> *Id.* at 30.

<sup>77</sup> *Id.* at 35-42.

<sup>78</sup> *Id.* at 41.

<sup>79</sup> *Id.* at 41-42.

<sup>80</sup> *Id.* at 42.

## Demonstration 4 (cont.)



What facts are already known that could inform the officer's exercise of discretion?

- Entered as LPR 29 years ago
- Convicted PWID methamphetamines and money laundering – RICO
- 20-year sentence imposed
- Diagnosed with diabetes, hypertension, COPD – Fraihat considerations
- Advanced age



What additional information (i.e., mitigating or aggravating factors) might the officer seek to obtain to assess the totality of the factors and circumstances?

- Are criminal conviction documents available?
- Are there additional criminal history considerations?
- Is there a victim witness statement associated with the underlying conviction?
- Does the noncitizen have family or community support?
- Is there any record of rehabilitation while incarcerated?

### Discussion of Findings

- The judgment whether a noncitizen poses a current threat to public safety requires an assessment of the individual and consideration of the totality of facts and circumstances.
- The review begins with the noncitizen's record and any specific aggravating factors. It is incumbent upon the officer to exercise diligence in developing a complete profile of the case, before taking action whenever possible and throughout the lifecycle of the case.



Noncitizen, now 42, entered the United States without inspection as a teen. After being arrested in 2019 for discharging an M-16 rifle during participation in a demonstration outside of the local police department, the noncitizen was convicted of illegal use/possession of a firearm, a felony, and sentenced to 18 months confinement. The noncitizen is in the U.S. without status.



**The ICE OPLA field location has determined that the conviction is an aggravated felony. Should the noncitizen be a priority for apprehension and removal?**

In another example, the training asks whether ICE officers should arrest and remove an illegal alien who shot a rifle “during participation in a demonstration outside of the local police department.”<sup>81</sup> Although the training appears to concede that such an alien would be considered “a current threat to public safety,” the materials pose additional questions “to assess the totality of the facts and circumstances” of the case, including “the circumstances surrounding the underlying

<sup>81</sup> Mayorkas Memo Training, *supra* note 71, at 39.

conduct, “any medical conditions associated with th[e] [illegal alien],” and whether the illegal alien is “a caregiver” or has “close ties in the U.S.”<sup>82</sup> As if shooting a firearm outside a police station is not a singularly sufficient basis upon which an alien should be removed from the United States, Secretary Mayorkas instructs ICE officers to get a fuller picture of the criminal alien’s life.<sup>83</sup>

## Demonstration 3 (cont.)

-  What facts are already known that could inform the officer’s exercise of discretion?
- Entered as a teen without inspection; no current immigration status
  - Relatively recent conviction of illegal use/possession of an M-16 firearm – sentenced to 18 months
  - Discharged firearm outside of a police station in commission of offense
-  What additional information (i.e., mitigating or aggravating factors) might the officer seek to obtain to assess the totality of the facts and circumstances?
- Given the significant gravity of the offense, are there any factors that would lead the officer NOT to take enforcement action?
  - Does the conduct itself indicate the individual was or is a current public safety threat?
  - What were the circumstances surrounding the underlying conduct?
  - Are police records available for the offense?
  - How did the noncitizen come to possess the M-16?
  - Are there any medical conditions associated with this noncitizen?
  - Is the noncitizen a caregiver or does the noncitizen have close ties in the U.S.?

### Discussion of Findings

- Does the noncitizen pose a current threat to national security, public safety, or border security? Should the noncitizen be a priority for apprehension and removal?
- Serious criminal conduct, as is described in this example, is the most common reason why a noncitizen is determined to be a current threat to public safety.
- While each case warrants gathering and assessing the totality of the facts and circumstances, the gravity of an offense, particularly if recent, may be dispositive.

The consequences of the Biden Administration’s no-consequences immigration policies are staggering, and the numbers speak for themselves: well over half a million criminal aliens are on ICE’s non-detained docket, meaning that aliens with criminal convictions or pending criminal charges are out on American streets and “free to reoffend.”<sup>84</sup> Moreover, “in fiscal year 2023, ICE removed 41 percent fewer aliens with criminal convictions and criminal charges than in fiscal year 2020—and nearly 60 percent fewer than in fiscal year 2019.”<sup>85</sup> The Biden Administration’s lack of interior immigration enforcement begins with far fewer arrests of criminal aliens.

Meanwhile, the Biden Administration has lodged significantly fewer detainers on criminal aliens than the Trump Administration. To ensure that criminal aliens are deported, ICE issues detainers on aliens who have been arrested “and who ICE has probable cause to believe are removable” from the United States.<sup>86</sup> Under a detainer, ICE “asks the other law enforcement agency to notify ICE before a removable individual is released from custody and to maintain custody of the [alien] for a brief period of time” so ICE can take custody of the alien.<sup>87</sup> Detainers not only preserve law enforcement resources but also protect Americans by ensuring that

<sup>82</sup> *Id.* at 40.

<sup>83</sup> *See id.*

<sup>84</sup> *See* Jan. Interim Staff Rep., *supra* note 17, at 9.

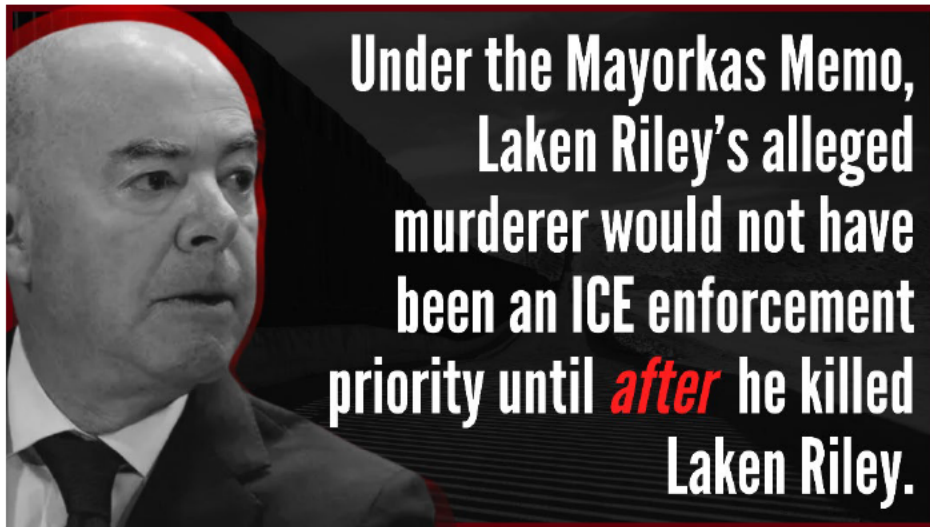
<sup>85</sup> *Id.*

<sup>86</sup> U.S. Immigr. and Customs Enf’t, *Detainers 101*, U.S. DEP’T OF HOMELAND SEC. (Sept. 27, 2022), <https://www.ice.gov/features/detainers>.

<sup>87</sup> *Id.*

dangerous criminal aliens are not released into communities.<sup>88</sup> In fiscal year 2019, for example, ICE issued 165,487 detainers for aliens whose criminal histories included 56,000 assaults, 14,500 sex crimes, 5,000 robberies, 2,500 homicides, and 2,500 kidnappings.<sup>89</sup> During the first three fiscal years of the Biden Administration, ICE lodged 44 percent fewer detainers than during the first three fiscal years of the Trump Administration.<sup>90</sup>

When confronted with Laken Riley’s death, Secretary Mayorkas deflected blame, noting that DHS “works closely with state and local law enforcement ‘to ensure that individuals who pose a threat to public safety are indeed our highest priority for detention and removal.’”<sup>91</sup> He did not state, however, whether Laken Riley’s alleged murderer would have been a “priority for



detention and removal” prior to her murder.<sup>92</sup> That is presumably because Secretary Mayorkas is aware that, as ICE officials have described to the Committee, Ibarra likely would not have been an enforcement priority under Mayorkas’s own enforcement memo.

One Deputy Field Office Director, who previously served as Acting Field Office Director in two jurisdictions, admitted that aliens who commit crimes such as larceny or theft, like Laken Riley’s alleged murderer, are not immigration enforcement priorities for the Biden Administration.<sup>93</sup> In fact, because of the Biden Administration’s “enforcement priorities,” an

<sup>88</sup> See U.S. Immigr. and Customs Enf’t, Fiscal Year 2019 Enf’t and Removal Operations Rep., U.S. DEP’T OF HOMELAND SEC. at 16 (2020), <https://www.ice.gov/sites/default/files/documents/Document/2019/eroReportFY2019.pdf> [hereinafter 2019 ICE Annual Rep.].

<sup>89</sup> *Id.*

<sup>90</sup> In fiscal years 2017, 2018, and 2019, ICE issued 484,990 detainers (142,356 in 2017, 177,147 in 2018, and 165,487 in 2019) compared to 270,127 in fiscal years 2021, 2022, and 2023 (with just 65,940 issued in 2021, 78,829 in 2022, and 125,358 in 2023). See *id.* at 17; U.S. Immigr. and Customs Enf’t, *ICE Annual Report, Fiscal Year 2023*, U.S. DEP’T OF HOMELAND SEC. at 17 (Dec. 29, 2023), <https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf> [hereinafter FY 2023 ICE Annual Rep.].

<sup>91</sup> Kaia Hubbard, *Homeland Security Secretary Alejandro Mayorkas says federal government “not notified” about suspect in Georgia nursing student’s death*, CBS NEWS (Mar. 3, 2024, 1:04 PM), <https://www.cbsnews.com/news/alejandromayorkas-federal-government-not-notified-suspect-in-georgia-nursing-death/>.

<sup>92</sup> See *id.*

<sup>93</sup> See Transcribed Interview of ██████████ Deputy Field Office Director at 48-49 (Sept. 28, 2023) (on file with Comm.); see also Transcribed Interview of ██████████ Deputy Field Office Director at 63-64 (Sept. 22, 2023) (on file with Comm.) (describing the Mayorkas’s Memo’s required review process and clarifying that such a review was not required prior to the Biden Administration).

enforcement action against an alien who committed a “property crime” would even have to receive additional review. The Deputy Field Officer Director testified:

Q. So, under the September 30th, 2021, [Mayorkas] memorandum, a criminal alien who had a criminal background but whose criminal background did not include an aggravated felony would not have directly fallen into one of these three priority categories?

A. It would not have been under presumed priority, yes.

Q. How is that different than the process before January 20th, 2021?

A. In the process before January 2021 was [sic] we could definitely arrest the – a priority on aggravated felon; however we could take an enforcement action against the criminal alien as long as we had the resources available to take that action.

Q. Can you give an example of a criminal alien who had a criminal history but that criminal history did not involve an aggravated felony?

A. I can give you one example. Larceny or theft, which was not violent, did not elevate to an aggravated felony, but was still a property crime so, you know, it was a crime against another person.

Q. Do you have any other examples that would fit within that category?

A. I do have a few examples. I can give you one more example off the top of my head would be a low-level criminal, something that was a misdemeanor of any sort, something that didn’t involve violence, as long as we had the bed space and the manpower to conduct that action or to arrest that person.

Q. But, under these guidelines from September 30th, 2021, those two examples that you just gave would not directly fit within the priorities?

A. Those two examples were not presumptive priorities, correct. They would have to be submitted for action approval through our field office director.

Q. And to clarify, before January 20th, 2021, those categories of crimes would not have had to go through that approval process?

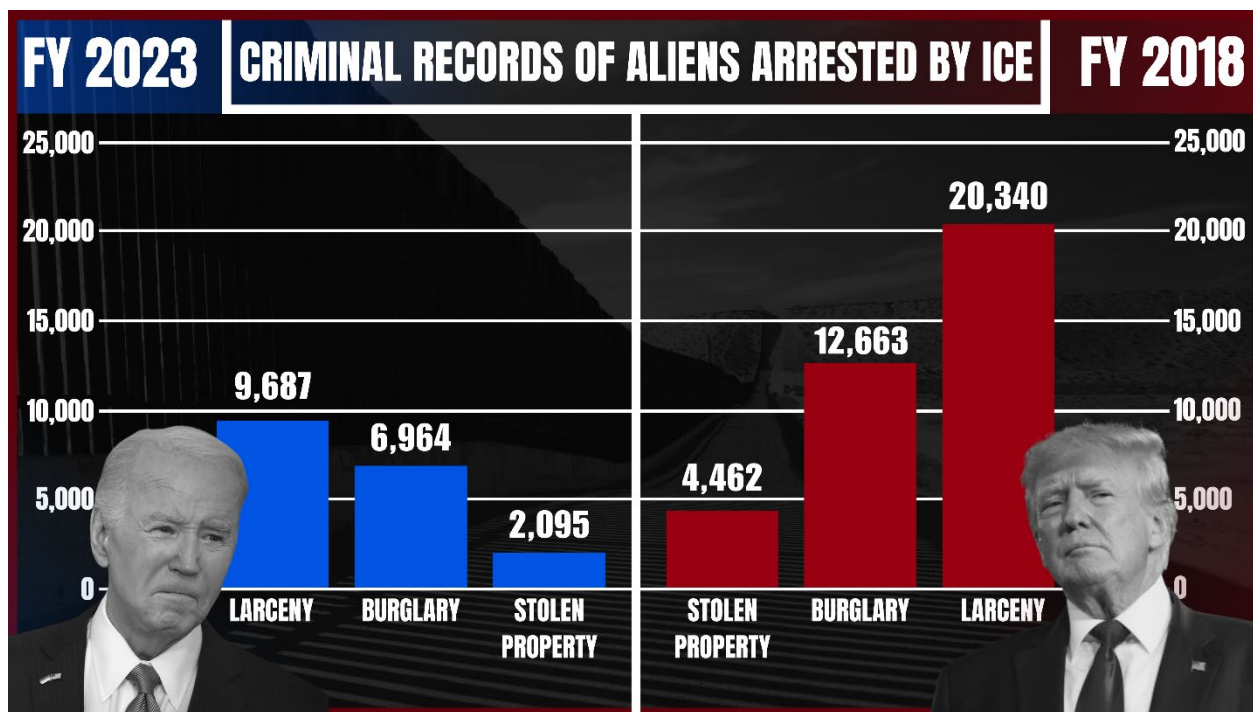
A. Correct.<sup>94</sup>

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<sup>94</sup> Transcribed Interview of ██████████ Deputy Field Office Director at 48-49 (Sept. 28, 2023) (on file with Comm.). The Deputy Field Office Director testified that, although the formal review process has changed since the initial memorandum implementation, a review is still required for all criminal aliens who fall outside the Mayorkas Memo’s “priorities.” *Id.* at 52.

Under the Mayorkas Memo, therefore, Laken Riley’s alleged murderer would not have been an ICE enforcement priority until *after* he killed Riley, which is exemplified by ICE’s refusal to arrest and detain Ibarra even after he committed at least two criminal offenses in the United States. Even then, according to the Mayorkas Memo training materials, ICE would have been required to “review [Ibarra’s] entire known criminal and administrative record, and other investigative information, before making a decision” on whether to take an enforcement action against him.<sup>95</sup>

The Biden Administration’s failure to take seriously crimes involving theft, burglary, and larceny is reflected in the number of administrative arrests by criminal charge or conviction category when compared to the Trump Administration. In fiscal year 2018, the Trump Administration arrested aliens responsible for 20,340 larceny offenses compared to just 9,687 under the Biden Administration in fiscal year 2023.<sup>96</sup> For burglary offenses, the Trump Administration arrested aliens with 12,663 charges and convictions in fiscal year 2018, with only 6,964 in fiscal year 2023.<sup>97</sup> For stolen property offenses, the Biden Administration in 2023 arrested aliens responsible for 2,095 charges and convictions compared to more than double that amount (4,462) during the Trump Administration in 2018.<sup>98</sup>



<sup>95</sup> Mayorkas Memo Training, *supra* note 71, at 30.

<sup>96</sup> Compare U.S. Immigr. and Customs Enf’t, *Fiscal Year 2018 ICE Enf’t and Removal Operations Report*, U.S. DEP’T OF HOMELAND SEC. at 4, <https://www.ice.gov/doclib/about/offices/ero/pdf/eroFY2018Report.pdf> (last accessed Apr. 1, 2024) [hereinafter FY 2018 ICE Annual Rep.], with 2023 ICE Annual Rep., *supra* note 90, at 14-15.

<sup>97</sup> *Id.*

<sup>98</sup> *Id.*

In addition to failing to arrest and remove criminal aliens due to the Mayorkas Memo, the Biden Administration also has failed to remove illegal aliens to Venezuela. Of the 334,914 Venezuelan nationals encountered by CBP in fiscal year 2023, more than half were encountered by Border Patrol between ports of entry,<sup>99</sup> while just 834 were removed by ICE.<sup>100</sup> Although ICE boasted in October 2023 that it had resumed removal flights to Venezuela,<sup>101</sup> according to press reports, Venezuela has since stopped accepting those flights.<sup>102</sup> Recalcitrant countries like Venezuela cause delays—in some cases indefinitely—in the removal process, leading to increased detention costs and even the release of “thousands of [aliens], including those with serious criminal convictions.”<sup>103</sup>

Because of this lack of cooperation, ICE officers may refuse to arrest an alien from Venezuela.<sup>104</sup> In fact, a senior ICE official admitted in a transcribed interview with the Committee and Subcommittee that increased immigration from Venezuela and the limited ability to remove illegal aliens to that country affect ICE’s ability to conduct enforcement, including arrests, detention, and removals, of Venezuelans in the United States. The senior ICE official testified:

Q. Does the increased migration from Venezuela and the limited ability to remove people impact your all’s ability to conduct enforcement?

A. Yes.

Q. And how does it impact your ability to conduct enforcement?

A. Well, we want to make sure we’re making judicious use of our resources. You know, we detain or remove – if we’re going to make an administrative arrest, that’s presumably for a removal.

So if there’s a foreign national from a country that we’re not going to be able to remove – Venezuela is the best example – we might want to have that information available for our resources in the field, but it might make more sense to utilize our resources elsewhere.<sup>105</sup>

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<sup>99</sup> U.S. Customs and Border Prot., *Nationwide Encounters*, U.S. DEP’T OF HOMELAND SEC., <https://www.cbp.gov/newsroom/stats/nationwide-encounters> (last accessed Feb. 23, 2024).

<sup>100</sup> 2023 ICE Annual Rep., *supra* note 90, at 99.

<sup>101</sup> Press Release, ICE resumes direct repatriation flights of Venezuelan nationals, IMMIGR. AND CUSTOMS ENF’T (Oct. 18, 2023), <https://www.ice.gov/news/releases/ice-resumes-direct-repatriations-venezuelan-nationals>.

<sup>102</sup> Kejal Vyas & Santiago Perez, *Venezuela Halt Flights of Deported Migrants From U.S. and Mexico*, WALL ST. J. (Feb. 22, 2024, 4:06 PM), <https://www.wsj.com/world/americas/venezuela-halts-flights-of-deported-migrants-from-u-s-and-mexico-962f6149>.

<sup>103</sup> Visa Sanctions Against Multiple Countries Pursuant to Section 243(d) of the Immigration and Nationality Act, U.S. DEP’T OF HOMELAND SECURITY, <https://www.ice.gov/visasanctions> (last accessed Feb. 7, 2024).

<sup>104</sup> See Transcribed Interview of ██████████, Immigr. and Customs Enf’t, Enf’t and Removal Operations, Enf’t Div., at 37-38, 55-56 (June 27, 2023) (on file with Comm.) (“But basically, if I know I’m not going to be able to remove somebody, we would not make an arrest administratively.”).

<sup>105</sup> *Id.* at 38.

Together with the Biden Administration’s apathetic approach to criminal aliens as articulated in the Mayorkas Memo, DHS’s inability to remove aliens to Venezuela helps to explain why ICE never arrested Ibarra despite his criminal history. Nonetheless, instead of imposing sanctions on Venezuela for its refusal to accept the return of its nationals,<sup>106</sup> the Biden Administration has created illegal categorical parole programs to reward Venezuelans, all but ensuring that thousands of Venezuelans can remain in the United States indefinitely, even those who may have a criminal history.<sup>107</sup>

### ***Committee and Subcommittee Oversight of Criminal Illegal Aliens and Terrorists***

During the 118th Congress, the Committee and Subcommittee have highlighted the dangerous consequences of the Biden border crisis. Through both a hearing and an interim staff report, the Committee spotlighted the Biden Administration’s policies that led to the death of 20-year-old Kayla Hamilton in Maryland in July 2022.<sup>108</sup> In her written testimony for a Subcommittee hearing in May 2023, Kayla’s mother, Tammy Nobles, described how the Biden Administration failed to screen the illegal alien MS-13 member who eventually murdered her daughter: “The United States Government has to secure our border. We need to properly vet all border crossers. The Government could have placed a phone call to authorities in El Salvador and found out that he was a gang member. But they didn’t.”<sup>109</sup> In July 2023, the Committee heard from an additional victim of illegal alien crime and learned how the Biden Administration’s lack of interior enforcement has resulted in more criminal aliens being free on American streets.<sup>110</sup> The Committee also has highlighted the dangers of terrorists crossing the southwest border and being released by the Biden Administration.<sup>111</sup>

In addition, the Committee has previously requested documents related to the Biden Administration’s lack of immigration enforcement, including training materials related to the Mayorkas Memo.<sup>112</sup> On March 13, 2024, after months of DHS’s refusal to provide that

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<sup>106</sup> See generally JILL H. WILSON, CONG. RESEARCH SERV., IF11025, IMMIGR.: “RECALCITRANT” COUNTRIES AND THE USE OF VISA SANCTIONS TO ENCOURAGE COOPERATION WITH ALIEN REMOVALS (July 10, 2020), <https://crsreports.congress.gov/product/pdf/IF/IF11025>.

<sup>107</sup> *DHS Announces New Migration Enf’t Process for Venezuelans*, U.S. DEP’T OF HOMELAND SEC. (Oct. 12, 2022), <https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans>.

<sup>108</sup> See H. Comm. on the Judiciary, Interim Staff Rep., *The Murder of Kayla Hamilton: A Case for Immigration Enforcement and Border Security* (May 23, 2023), <https://judiciary.house.gov/sites/evo-subsites/republicans-judiciary.house.gov/files/evo-media-document/2023-05-23-the-murder-of-kayla-hamilton-a-case-study-for-immigration-enforcement-and-border-security.pdf>.

<sup>109</sup> *The Biden Border Crisis: Part III, Hearing Before the H. Subcomm. on Immigration Integrity, Security, and Enforcement*, 118th Cong. (May 23, 2023) (written testimony of Tammy Nobles).

<sup>110</sup> *The Consequences of Criminal Aliens on U.S. Communities, Hearing Before the H. Subcomm. on Immigration Integrity, Security, and Enforcement*, 118th Cong. (July 13, 2023).

<sup>111</sup> *Terrorist Entry Through the Southwest Border, Hearing Before the H. Subcomm. on Immigration Integrity, Security, and Enforcement*, 118th Cong. (Sept. 14, 2023).

<sup>112</sup> See Letter from Jim Jordan et al., Chairman, H. Comm. on the Judiciary, to Alejandro Mayorkas, Sec’y, U.S. Dep’t of Homeland Sec. (Nov. 2, 2023).

information, the Committee subpoenaed those materials.<sup>113</sup> DHS provided a partial response on April 3, 2024.<sup>114</sup>

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## CONCLUSION

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The Biden Administration’s open-borders, catch-and-release policies not only have incentivized aliens from all around the world to travel to the southwest border for near-guaranteed release into the United States but also have endangered national security and public safety across the country. The Laken Riley case is just one tragic example of the consequences of President Biden’s disastrous border policies that prioritize illegal aliens over U.S. citizens and lawful immigrants. Releasing criminal aliens into American communities is neither “humanitarian” nor a “significant public benefit” to citizens of the United States and law-abiding legal immigrants. Until President Biden reverses his policies, utilizes the myriad immigration enforcement tools at his disposal, and secures the southwest border, more Americans will tragically and unnecessarily die at the hands of criminal illegal aliens who are released into the United States and allowed to remain in the country.

In passing H.R. 2, the Secure the Border Act of 2023, on May 11, 2023, the U.S. House of Representatives acted eleven months ago to secure the southwest border and prevent foreseeable tragedies like the death of Laken Riley. Unfortunately, 213 Democrats voted against the Secure the Border Act of 2023. On March 7, 2024, the U.S. House of Representatives passed H.R. 7511, the Laken Riley Act, to ensure that illegal aliens who are arrested for theft offenses, like Jose Ibarra, are detained and unable to reoffend and victimize Americans. The bill also allows state attorneys general to bring a civil action against federal government officials who violate U.S. immigration laws, like the statutes the Biden Administration violated to release Ibarra into the United States in the first place. Despite these commonsense reforms, 170 Democrats voted against the Laken Riley Act.<sup>115</sup> The Senate must act, and the President must sign, both H.R. 2 and the Laken Riley Act to safeguard Americans and end the Biden border crisis. In the meantime, the Committee and Subcommittee will continue our oversight of the Biden Administration’s failing immigration policies.

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<sup>113</sup> See Anna Giaritelli, *Jordan subpoenas Mayorkas for failure to produce long-demanded ICE data*, WASH. EXAMINER (Mar. 13, 2024, 2:48 PM), <https://www.washingtonexaminer.com/news/house/2918961/jordan-subpoenas-mayorkas-for-failure-to-produce-long-demanded-ice-data/>.

<sup>114</sup> See Letter from Zephra Buetow, Assistant Sec’y for Leg. Affairs, U.S. Dep’t of Homeland Sec., to Jim Jordan, Chairman, H. Comm. on the Judiciary (Apr. 3, 2024).

<sup>115</sup> Greg Norman et al., *House passes Laken Riley Act requiring ICE to detain migrants arrested for theft*, FOX NEWS (Mar. 7, 2024, 2:09 PM), <https://www.foxnews.com/politics/house-passes-laken-riley-act-requiring-ice-detain-migrants-arrested-theft>.